



Signed and Filed: July 12, 2011

A handwritten signature in black ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case No. 11-31835
) Chapter 7
BRUCE ALLAN BLANKENHORN,)
)
)
Debtor.)

MEMORANDUM RE DEBTOR'S MOTION FOR RECONSIDERATION

Upon due consideration, and for reasons stated below, the court denies Debtor's Motion for Reconsideration of the court's June 19, 2011 Order Granting Motion for Relief From Automatic Stay. This memorandum shall constitute the court's findings of fact and conclusions of law.

FACTS

On May 11, 2011, Debtor filed the above-captioned, no-asset chapter 7 bankruptcy case. On May 17, 2011, Daniel J. Rosenbledt, Trustee of the Rosenbledt PTE Trust Dated March 15, 2000 (Movant), filed and served a motion for relief from stay (the Motion). The Motion sought complete relief from the automatic stay to initiate and complete eviction proceedings against Debtor and other occupants of the real property commonly known as 990 Avenue Alhambra, El Granada, San Mateo County, California 94018 (the

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1 Property). The Motion also sought a waiver of the stay created by
2 Fed. R. Bankr. Proc. 4001(a)(3). The request for judicial notice
3 in support of the Motion attached a true and correct copy of: (1) a
4 trustee's deed upon sale re Property, listing Movant as the grantee
5 and recorded on February 23, 2011; and (2) an unlawful detainer
6 judgment entered by the San Mateo County Superior Court on April
7 27, 2011, which authorizes Movant to recover possession of the
8 Property from Debtor.

9 On May 25, 2011, Debtor filed opposition to the Motion,
10 questioning the legality of the foreclosure process. Debtor also
11 appeared at the hearing on the Motion, held May 31, 2011, and
12 argued that the Motion should be denied to irregularities in the
13 foreclosure process. Debtor did not object to the motion to waive
14 the provisions of Fed. R. Bankr. Proc. 4001(a)(3).

15 At the hearing on the Motion held May 31, 2011, the court
16 overruled Debtor's objections and directed Movant to lodge an
17 order: (1) granting relief from stay, *nunc pro tunc* to May 31,
18 2011, to complete efforts to obtain possession of the Property,
19 provided that no physical eviction occurred prior to June 13, 2011;
20 (2) waiving the provisions of Fed. R. Bankr. Proc. 4001(a)(3); and
21 (3) granting *in rem* relief pursuant to 11 U.S.C. § 362(d)(4). On
22 June 20, 2011, the court entered an order consistent with its oral
23 ruling at the May 31st hearing.

24 On June 24, 2011, Debtor filed a motion for reconsideration,
25 arguing that the Motion failed to disclose Debtor's substantial
26 equity in the Property at the time of the foreclosure sale, and
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1 that there was no basis to waive the stay created by Fed. R. Bankr.
2 Proc. 4001(a)(3) or to grant *in rem* relief.

3 LAW

4 Reconsideration and amendment of an order is "an extraordinary
5 remedy, to be used sparingly in the interests of finality and
6 conservation of judicial resources. . . [and] should not be
7 granted, absent highly unusual circumstances, unless the district
8 court is presented with newly discovered evidence, committed clear
9 error, or if there is an intervening change in the controlling
10 law." Kona Enterprises, Inc. v. Estate of Bishop, 229 F.3d 877,
11 890 (9th Cir. 2000) (citations omitted).

12 The motion for reconsideration must be denied, because, as to
13 Movant's efforts to obtain possession the Property, continuation of
14 the automatic stay does not further either of the two legitimate
15 bankruptcy purposes of the automatic stay in a chapter 7 case:
16 to protect the assets of the estate from dissipation; and to
17 protect the Debtor, prior to entry of a discharge, from creditor
18 action to enforce pre-petition claims for *in personam* liability.
19 It was not appropriate to continue the stay to protect the assets
20 of the estate, because (1) the Property was foreclosed upon by
21 Movant prepetition; (2) an unlawful detainer judgment granted
22 Movant the right to possession of the Property;^{1/} and (3) the
23 trustee, who is the legal representative of the bankruptcy estate,
24 did not assert any interest in the Property or oppose the motion

25
26 ^{1/} This court lacks the power to review the state court's
27 judgment. E.g. Dubinka v. Judges of Sup. Ct., 23 F.3d 218, 221
28 (9th Cir. 1994) ("Federal courts may exercise only original
jurisdiction; they may not exercise appellate jurisdiction over
state court decisions.").

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1 for relief from stay. Continuation of the stay is not necessary to
2 protect Debtor against *in personam* liability, because the Order
3 only permits Movant to obtain possession of the Property, and does
4 not permit the enforcement of any *in personam* claim against Debtor.
5 Accordingly, the court properly granted the Motion.

6 The court's termination of the 14-day stay^{2/} was an exercise of
7 discretion that the court does not see fit to alter at this time.
8 The court also notes that the Order did bar Movant from evicting
9 Debtor from the Property for fourteen days after the date the
10 hearing.

11 The court's award of *in rem* relief was proper because, as to
12 the interests of the Debtor and the estate in the Property, and for
13 the reasons stated above, there is no bankruptcy purpose to
14 permitting the automatic stay to apply to Movant's efforts to
15 recover possession of the Property.

16 ****END OF MEMORANDUM****
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28 ^{2/} Fed. R. Bankr. Proc. 4001(a)(3).

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COURT SERVICE LIST

Bruce Allan Blankenhorn
990 Avenue Alhambra
Half Moon Bay, CA 94019